

Henry C. Su (SBN 211202; suh@howrey.com)
Katharine L. Altemus (SBN 227080; altemusk@howrey.com)
HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, California 94303
Telephone: (650) 798-3500
Facsimile: (650) 798-3600

Robert Ruyak
Matthew Wolf (Admitted *Pro Hac Vice*)
Marc Cohn (Admitted *Pro Hac Vice*)
HOWREY LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 783-0800
Facsimile: (202) 383-6610

Attorneys for Plaintiffs

HOLOGIC, INC., CYTYC CORPORATION and HOLOGIC LP

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

Case No. C08 00133 RMW (RS)

**AMENDED¹ ADMINISTRATIVE MOTION
TO FILE UNDER SEAL CONFIDENTIAL
VERSION OF OPPOSITION BRIEF AND
EXHIBITS A, D THROUGH P, S, AND T TO
THE DECLARATION OF HENRY C. SU IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANT SENORX, INC.'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT OF NON-INFRINGEMENT
(‘813 PATENT, CLAIMS 11 & 12; ‘204
PATENT, CLAIMS 4 & 17; AND ‘142
PATENT, CLAIM 6)**

[CIVIL LOCAL RULE 79-5(b)-(d)]

Date: June 25, 2008
Time: 2:00 p.m.
Room: 6, 4th Floor
Judge: Hon. Ronald M. Whyte

AND RELATED COUNTERCLAIMS.

¹ This Motion amends Docket No. 152, filed June 4, 2008.

1 PLEASE TAKE NOTICE pursuant to Civil Local Rule 79-5(b)-(d), Plaintiffs Hologic, Inc.,
2 Cytac Corporation, and Hologic LP ("Plaintiffs" or "Hologic") hereby move the Court for an
3 administrative order to file under seal (1) the confidential version of Plaintiffs' Opposition to
4 Defendant SenoRx, Inc.'s Motion for Partial Summary Judgment of Non-Infringement ("Opposition
5 Brief"); and (2) Exhibits A, D through P, S, and T to the Declaration of Henry C. Su in Support of
6 Plaintiffs' Opposition to Defendant SenoRx, Inc.'s Motion for Partial Summary Judgment of Non-
7 Infringement. As required by Civil Local Rule 79-5(c), Hologic has created confidential and non-
8 confidential versions of its Opposition Brief, and has lodged with the Clerk both versions of the brief.

9 A portion of the Opposition Brief, and Exhibit N to the supporting Declaration of Henry C. Su,
10 contain confidential Hologic business information. The distribution to the general public of this
11 information could cause harm to Hologic.

12 A portion of the Opposition Brief, and Exhibits A, D though M, O, P, S, and T appear to
13 contain confidential SenoRx business information.

14 To date, the parties have not executed a Protective Order that governs how the confidential and
15 proprietary information produced during discovery shall be treated by the parties. Accordingly, until
16 such a Protective Order has been executed and entered by the Court, such confidential and proprietary
17 materials are by operation of Patent Local Rule 2-2 deemed to be "Confidential—Attorneys Eyes Only"
18 materials, unless otherwise agreed by the parties. In compliance with Northern District Civil Local
19 Rule 79-5(B) and (C), Hologic wishes to withhold from the public documents that contain or appear to
20 contain confidential business information.

21 For the foregoing reasons, Hologic respectfully requests that the Court enter an order allowing

22 \\
23
24
25
26
27
28

1 Hologic to file under seal the confidential version of its Opposition Brief and Exhibits A, D through P,
2 S, and T to the supporting Declaration of Henry C. Su.

3 Dated: June 5, 2008

4
5 By: /s/
6 Henry C. Su

7
8 HOWREY LLP
9 Attorneys for Plaintiffs
10 Hologic, Inc., Cytac Corporation,
11 and Hologic LP
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of San Mateo, State of California. I am over the age of 18 and not a party to the within action. My business address is 1950 University Avenue, 4th Floor, East Palo Alto, California 94303.

On June 6, 2008, I served on the interested parties in said action the within:

AMENDED ADMINISTRATIVE MOTION TO FILE UNDER SEAL CONFIDENTIAL VERSION OF OPPOSITION BRIEF AND EXHIBITS A, D THROUGH P, S, AND T TO THE DECLARATION OF HENRY C. SU IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT SENORX, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF NON-INFRINGEMENT ('813 PATENT, CLAIMS 11 & 12; '204 PATENT, CLAIMS 4 & 17; AND '142 PATENT, CLAIM 6; DECLARATION OF GREGORY K. STOREY IN SUPPORT OF AMENDED ADMINISTRATIVE MOTION TO FILE UNDER SEAL CONFIDENTIAL VERSION OF OPPOSITION BRIEF AND EXHIBIT N TO THE DECLARATION OF HENRY C. SU IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT SENORX, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF NON-INFRINGEMENT ('813 PATENT, CLAIMS 11 & 12; '204 PATENT, CLAIMS 4 & 17; AND '142 PATENT, CLAIM 6); and [PROPOSED] ORDER GRANTING PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL

by placing a true copy thereof in a sealed envelope(s) addressed as stated below and causing such envelope(s) to be deposited in the U.S. Mail at East Palo Alto, California.

F.T. Alexandra Mahaney (amahaney@wsgr.com)
Natalie J. Morgan (nmorgan@wsgr.com)
Wilson Sonsini Goodrich & Rosati
12235 El Camino Real, Suite 200
San Diego, California 92130

Bruce R. Genderson (bgenderson@wc.com)
Aaron P. Maurer (amaurer@wc.com)
Rachael Shanahan Rodman (rrodman@wc.com)
Adam D. Harber (aharber@wc.com)
Williams & Connolly LLP
725 - 12th Street, N.W.
Washington, D.C. 20005

☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☒ (EMAIL/ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the submission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on June 6, 2008, at East Palo Alto, California.

Sonya Schwab
(Type or print name)


(Signature)

Henry C. Su (SBN 211202; suh@howrey.com)
Katharine L. Altemus (SBN 227080; altemusk@howrey.com)
HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, California 94303
Telephone: (650) 798-3500
Facsimile: (650) 798-3600

Robert Ruyak
Matthew Wolf (Admitted *Pro Hac Vice*)
Marc Cohn (Admitted *Pro Hac Vice*)
HOWREY LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 783-0800
Facsimile: (202) 383-6610

Attorneys for Plaintiffs
HOLOGIC, INC., CYTYC CORPORATION and HOLOGIC L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. C08 00133 RMW (RS)

**DECLARATION OF GREGORY K.
STOREY IN SUPPORT OF *AMENDED*
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL VERSION
OF OPPOSITION BRIEF AND EXHIBIT N
TO THE DECLARATION OF HENRY C. SU
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT SENORX,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT OF NON-
INFRINGEMENT ('813 PATENT, CLAIMS
11 & 12; '204 PATENT, CLAIMS 4 & 17;
AND '142 PATENT, CLAIM 6)**

[CIVIL LOCAL RULE 79-5(C) AND (D)]

1 I, Gregory K. Storey, declare as follows:

2 1. I am an associate with the law firm of Howrey LPP and a member of the Bar of this
3 Court. I serve as outside counsel for Plaintiffs Hologic, Inc., Cytac Corporation, and Hologic, L.P.
4 (“Plaintiffs” or “Hologic”). I base this declaration on my personal knowledge, and if called to testify, I
5 could and would competently testify as to the matters set forth below.

6 2. I submit this declaration in support of Hologic’s *Amended* Administrative Motion to Seal
7 (a) the confidential version of Plaintiffs’ Opposition to Defendant Senorx, Inc.’s Motion for Partial
8 Summary Judgment of Non-Infringement (‘813 Patent, Claims 11 & 12; ‘204 Patent, Claims 4 & 17;
9 and ‘142 Patent, Claim 6) (“Confidential Opposition Brief”) and (b) Exhibit N to the supporting
10 Declaration of Henry C. Su.

11 3. Portions of the Confidential Opposition Brief, and Exhibit N to the supporting
12 Declaration of Henry C. Su, contain confidential Hologic business information. Both pertain to
13 deposition testimony that was designated “Highly Confidential - Outside Attorneys Eyes Only” -
14 pursuant to Patent Local Rule 2-2. The distribution of this information to the public could cause harm
15 to Hologic.

16 4. I declare under penalty of perjury under the laws of the United States and the State of
17 California that the foregoing is true and correct.

18 Executed on June 5, 2007, in East Palo Alto, California.

19
20
21 By: /s/
Gregory K. Storey

22
23 HOWREY LLP
24 Attorneys for Plaintiffs
25 Hologic, Inc., Cytac Corporation,
26 and Hologic L.P.
27
28

Henry C. Su (SBN 211202; suh@howrey.com)
Katharine L. Altemus (SBN 227080; altemusk@howrey.com)
HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, California 94303
Telephone: (650) 798-3500
Facsimile: (650) 798-3600

Robert Ruyak
Matthew Wolf (Admitted *Pro Hac Vice*)
Marc Cohn (Admitted *Pro Hac Vice*)
HOWREY LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 783-0800
Facsimile: (202) 383-6610

Attorneys for Plaintiffs

HOLOGIC, INC., CYTYC CORPORATION and HOLOGIC LP

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. C08 00133 RMW (RS)

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

Date: June 25, 2008

Time: 2:00 p.m.

Courtroom: 6, 4th Floor

Judge: Hon. Ronald M. Whyte

[PROPOSED] ORDER

The Court, having considered Plaintiffs' *Amended* Administrative Motion To File Under Seal Confidential Version of Opposition Brief and Exhibits A, D through P, S, and T to the Declaration of Henry C. Su in Support of Plaintiffs' Opposition to Defendant SenoRx, Inc.'s Motion for Partial Summary Judgment of Non-Infringement, finds that good cause exists pursuant to Civil L.R. 79-5 for the Motion and hereby orders that the Motion is GRANTED in its entirety.

The clerk shall maintain under seal the confidential version of the Opposition Brief and Exhibits A, D through P, S, and T to the Declaration of Henry C. Su in Support of Plaintiffs' Opposition to Defendant SenoRx, Inc.'s Motion for Partial Summary Judgment of Non-Infringement.

It is SO ORDERED.

Dated: _____, 2008

Ronald M. Whyte
United States District Court Judge